

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. On or about May 30, 2008, petitioner submitted a variance request to the Department. Petitioner specifically requested a variance to decrease the amount of her co-pay and to pay her additional childcare deposit of \$250. The Department had paid \$100 towards petitioner's childcare deposit. Petitioner explained that she was having a hard time keeping up financially.

3. On or about June 16, 2008, the Department reduced petitioner's co-pay to zero but denied petitioner's other request.

4. The petitioner requested a fair hearing on or about June 23, 2008. The petitioner asked the Department to look at her case again because she was not receiving her ordered amount of child support.

5. A telephone status conference was held on July 7, 2008. At that time, the Commissioner's Review had not been completed, and the case was rescheduled.

6. The commissioner's review was issued on August 1, 2008 in which the variance denial was upheld stating that they were unable to grant a variance due to increased childcare demands and decreased state revenues to fund the program.

7. During the August 7, 2008 telephone status conference, the parties agreed that the facts were not in dispute. The parties were given deadlines to submit written argument, but the petitioner did not do so.

ORDER

The Department's decision to deny a variance is affirmed.

REASONS

The Vermont Legislature established a child care subsidy program for parents who meet certain eligibility criteria. The pertinent statute is 33 V.S.A. § 3512 which states, in part:

(a) A child care services program is established to subsidize, to the extent that funds permit, the costs of child care for families that need child care services in order to obtain employment, to retain employment or to obtain training leading to employment...

(b) The subsidy authorized by this section shall be on a sliding scale basis. The scale shall be established by the commissioner, by rule, and shall bear a reasonable relationship to income and family size.

The Department adopted rules including a sliding fee scale based upon gross income and family size. Child Care Services Regulation 4031 and 4032. The Department developed certain income exceptions primarily for children in protective services, children at risk, etc. Regulation 4034.1. The Department adopted a policy allowing them to pay up to \$100 per child towards the childcare deposit of a licensed program. In addition, the Department has discretion

to allow a variance in special and unique situations.
Regulation 4035.

The child care subsidy program is not an entitlement program. The ability of the Department to meet a potential applicant's needs is based upon the funding of the program. If there is insufficient funding, potentially eligible applicants will be denied services.

Given these constraints, variance requests are closely scrutinized.

Despite the subsidy, petitioner finds her situation economically difficult and applied for a variance. Petitioner's co-pay was reduced to zero, but she was denied payment of her \$250 childcare deposit.

The standard in this case is whether the Department abused their discretion in denying petitioner's request. The Department followed their policies including payment of \$100 towards the childcare deposit. The Department also granted part of the variance request by decreasing petitioner's co-pay to zero. The Department had previously paid \$100 towards petitioner's childcare deposit. The Department was within the statutory guidelines when they denied petitioner's request to pay her \$250 childcare deposit.

Over the years, state funding for childcare subsidies has not kept pace with need. The lack of funding leaves the Department in a difficult position as they attempt to meet competing needs. The Department made a difficult decision in this case. They did not abuse their discretion in denying petitioner's variance request. As a result, the Department's decision is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4(D).

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